IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 454 OF 1997

The State of Maharashtra..... ....Appellant.
(Orig.Complt.)

V/s

Deepak Bhanudas Katavate .... Respondent.
(Orig.Accused)

Mr.D.R.More, APP for the State.

Mr.Siddharth Likhite with Mr.Nitin Jamdar, Adv. the respondent.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

1st July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned IV Additional Sessions Judge, Satara, in Sessions Case No.115 of 1995 on 1.4.1997 the appellant-State has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor as also the learned Advocate for the respondent we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution story stated briefly is that the deceased Namdeo Bapu

Bhise was friend of the accused-Deepak. There was quarrel amongst deceased and the accused on account of collections made in Ganpati festival. On 9.3.1995 when deceased returned from iron workshop at about 10.00 a.m. along with accused went for bathing to river Brahmapuri. The complainant Kamal Bhise mother of the deceased had given Rs.15/- and a gunny bag to the deceased to bring coal for iron shop. The accused and the deceased returned at about 2.00 p.m. and had their meals and went away at 2.30 p.m. It is alleged that the accused then throttled the deceased near the stream flowing adjacent to Choundeshwari temple after pelting a stone on his head causing bleeding injury. On 12.3.1995 Bhiku Mane on noticing dead body of the deceased reported the matter to the police station of Rahimatpur. On the same day a complaint was lodged by mother of the deceased and crime No.15 of 1995 came to be registered under section 302 and 201 of Indian Penal Code, investigation was conducted by P.S.I. Belvate and the appellant-accused came to be arrested on 16.3.1995. The prosecution has examined as many as eight witnesses to bring home the guilt. The learned trial Judge on thoroughly considering the evidence of said witnesses came to conclusion of acquittal. Feeling aggrieved by the said order of acquittal the State, as aforesaid, as preferred this appeal.

4. P.W.1-Kamal Bhise who is mother of the deceased lodged the complaint on 12.3.1995 though the deceased had disappeared since 9.3.1995. P.W.2-Bhiku Mane is the person who noticed dead body of the deceased. P.W.3-

Aslam Mujawar has although in his evidence said that the accused came to purchase kerosene to his shop but in cross examination he has denied the same saying that he does not remember as to who were the customers on the day in question as there was heavy rush. P.W.4-Ravindra Bhosale has turned hostile. P.W.5-Sanjay Jadhav is said to have seen the accused and deceased together going by road of Choneshwari temple. P.W.6 is Dr.Suresh Mamdapure who conducted the post mortem and has certified that the death must have occurred within 24 to 36 hours earlier. He has stated that the cause of death was due to asphyxia due to throttling and has proved that it was a homicidal death. But his evidence is not challenged. P.W.7-Sanjay Gaikwad is the panch witness to recovery panchnama and has proved the same. P.W.8-Ashok Belvate is the investigating officer who conducted the investigation.

5. It will thus be seen from our reappreciation of evidence that none of the witnesses is eye witness to the incident and their deposition as recorded does not inspire any confidence so as to come to the conclusion of setting aside the order of acquittal. The learned Judge, as aforesaid has given his cogent reasons for coming to conclusion of acquittal. The said reasoning is neither illegal nor perverse. We concur with the said findings and reasoning. Hence, in our opinion, no interference can be called in the order of acquittal. We confirm the order of acquittal as passed by the learned trial Judge and dismiss the appeal.